

## **REMARKS**

Entry of the foregoing amendments is respectfully requested.

### **Summary of Amendments**

Upon entry the foregoing amendments independent claims 78, 79 and 120 are amended, whereby 78-136 continue to be pending, with claims 78, 79 and 120 being independent claims.

Applicants note that claims 78, 79 and 120 are amended by shifting the recitation of “pearlescent” from the beginning to the end of the “wherein” clause to leave absolutely no doubt as to whether or not this property is a part of the preamble of the independent claims.

Applicants point out that entry of the present amendments is proper in that they do not require any further search and do not raise any new issues.

### **Summary of Office Action**

Claims 78-136 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Riedel et al., U.S. Patent No. 6,558,680 (hereafter “RIEDEL”) in view of Charlton et al., U.S. Patent No. 6,486,106 (hereafter “CHARLTON”) and, possibly, in view of Chapin et al., U.S. Patent No. 4,370,319 (hereafter “CHAPIN”).

### **Response to Office Action**

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

***Request to Withdraw Finality of Office Action***

Applicants note that according to page 5, next-to-last paragraph of the present Office Action, claims 78-136 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over (only) RIEDEL in view of CHARLTON. However, at page 8 the present Office Action refers to CHAPIN (which is assumed to denote U.S. Patent No. 4,370,319, cited in the previous Office Action) several times (see page 8, lines 4, 7 and 16). In view thereof, Applicants do not know whether the present rejection is intended to be based on RIEDEL in view of CHARLTON, or on RIEDEL in view of CHARLTON and CHAPIN. Accordingly, Applicants are unable to properly respond to the present rejection, wherefore Applicants respectfully request withdrawal of the finality of the present Office Action to give Applicants a fair and complete opportunity to address the Examiner's concerns after they know on which documents the present rejection is based.

Further, at the top of page 5 of the present Office Action it is asserted that the recitation "pearlescent" occurs in the preamble of the claims submitted in response to the previous Office Action. This is apparently not correct. The recitation of "pearlescent" in the previously submitted claims is clearly a part of the "wherein" clause, i.e., not a part of the preamble. In other words, "pearlescent" is not an intended but a required property of the claimed compositions. To avoid any future misunderstandings in this regard, in the independent claims submitted herewith the recitation of "pearlescent" occurs at the very end of the "wherein" clause.

At any rate, the fact that the Examiner clearly has misconstrued the independent claims and has not given any patentable weight to the recitation of "pearlescent" is yet another reason why the finality of the present Office Action should be withdrawn to give Applicants an opportunity to respond to the Examiner's arguments, if any, as to why the recitation of "pearlescent" in connection with the claimed compositions allegedly does not render these compositions patentable.

***Response to Rejection of Claims under 35 U.S.C. § 103(a)***

Claims 78-136, i.e., all claims under consideration, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RIEDEL in view of CHARLTON (and CHAPIN ?). The rejection essentially alleges that RIEDEL teaches cosmetic and dermatological compositions containing fatty acids, fatty alcohols, non-polar lipids and ethoxylated fatty acid esters and also teaches or suggests all other elements recited in the rejected claims with the exception of the presence of a specific amphiphilic polymer, acrylate/vinyl isodecanoate crosspolymer, which is recited in some of the rejected claims, and the presence of sodium hydroxide and potassium hydroxide. In this regard, the rejection relies on CHARLTON (and CHAPIN ?) which allegedly teach the elements which are missing from RIEDEL.

Applicants respectfully traverse this rejection for several reasons. In particular, it is pointed out again that the present independent claims recite that the claimed cosmetic or dermatological compositions are pearlescent. In this regard, the Examiner's attention again is directed specifically to the comments in pages 1-3 of the present specification, which comments should make it clear that providing a pearlescent composition is not a trivial thing to do. RIEDEL, CHARLTON (and CHAPIN) do not appear to mention pearlescent compositions, let alone teach how pearlescent compositions (and in particular, pearlescent compositions which show good skin compatibility) can be obtained. For this reason alone, the cited documents are unable to render obvious the claimed compositions.

Applicants also emphasize again that the mere fact that RIEDEL mentions "polymers" as one of many examples of optional ingredients, auxiliaries and additives which find use in cosmetic compositions clearly does not amount to a motivation for one of ordinary skill in the art to incorporate specific classes of polymers which are not conventionally employed in cosmetic or

dermatological compositions, i.e., amphiphilic polymers, associatives polymers and/or siloxane elastomers, into the compositions of RIEDEL.

Specifically, the term “polymers” encompasses hundreds, if not thousands, of different types of polymeric substances. Even if RIEDEL mentions some polymers which may qualify as amphiphilic polymers or associative polymers, it is to be taken into account that RIEDEL mentions these polymers only as members of the group of hundreds of examples of optional components of the compositions disclosed therein and provides no apparent reason whatsoever to pick and choose specifically amphiphilic polymers or associative polymers for incorporation into any of the compositions of RIEDEL. For example, none of the claims of RIEDEL mentions any compound which is (or is closely related to) an amphiphilic polymer or an associative polymer.

Regarding the siloxane elastomers recited in the present claims, Applicants note that the Examiner refers to Table 1 of RIEDEL which mentions, among others, cetyl dimethicone (Abil Wax 9840), and asserts that this compound “is conventionally known in the art as a siloxane elastomer”, without providing any written (or other) evidence whatsoever in this respect. In this regard, Applicants point out that cetyl dimethicone is mentioned in the paragraph bridging pages 23 and 24 of the present specification as an example of a preferred component of the oil phase of (emulsion) compositions, i.e., not as an example of a siloxane elastomer.

Applicants further note that the present rejection also relies on RIEDEL in combination with CHARLTON. However, it is not seen that one of ordinary skill in the art would be motivated to combine the teachings of RIEDEL and CHARLTON, let alone that one of ordinary skill in the art would be motivated to pick and choose specific optional components of the compositions of CHARLTON for incorporation into the compositions of RIEDEL.

Specifically, CHARLTON is directed to a skin wash composition intended for topical

application to water-wetted skin comprising an alpha-hydroxy acid active ingredient formulated in a mild and non-irritant detergent base consisting of a mixture of a non-ionic alkylpolyglucoside surfactant and an amphoteric surfactant (see abstract of CHARLTON). Further, according to col. 1, lines 60-65, the compositions of CHARLTON are “based on the unexpected finding that a detergent base comprising a mixture of a non-ionic alkylpolyglucoside surfactant and an amphoteric surfactant not only has the desired cleansing and foaming characteristics and is mild and non-irritant when applied to the skin but also enables compositions to be formulated at low pH”.

RIEDEL, in contrast, fails to specifically point out alkylpolyglucoside surfactants, amphoteric surfactants or alpha-hydroxy acids as possible, let alone preferred, optional components of the compositions disclosed therein and is primarily directed to cosmetic skin care compositions with a reduced feel of stickiness (see, e.g., col. 1, lines 36-40 and col. 3, lines 41-43), i.e., a property which would clearly not be of any particular importance in the case of a composition that is intended to be applied to water-wetted skin and subsequently rinsed off, like the skin wash compositions of CHARLTON (see, e.g., col. 1, lines 6-12 of CHARLTON).

Applicants further point out that the present Office Action alleges at page 7 thereof that Stabylen 30, which is mentioned as optionally employed stabilizer for the skin wash compositions of CHARLTON is acrylate/vinyl isodecanoate crosspolymer, without providing any evidence supporting this allegation.

Regarding the Examiner’s comments regarding the use of a neutralizing agent mentioned in CHARLTON, it is pointed out that the preferred neutralizing agent (for alpha-hydroxy acids) according to this document is tromethamine, i.e., not sodium hydroxide (see col. 3, lines 9-11 of CHARLTON).

Regarding present claims 119 and 120, which recite that the claimed compositions are substantially free of mono- and di-fatty acid esters of glycerol and glycol, Applicants note that the Examiner maintains the position that this recitation encompasses the concentration of 0.2-10 % by weight of fatty acid mono- and/or diglycerides which is to be present in the compositions of RIEDEL. The Examiner now relies on a dictionary definition of “substantially” as meaning “being largely but not wholly that which is specified” and asserts that in view thereof, “substantially free does not mean absolutely free” and therefore, containing 0.2 % of mono- and di-fatty acid esters of glycerol and glycol allegedly is the same as being substantially free of mono- and di-fatty acid esters of glycerol and glycol (page 4, second paragraph of the present Office Action).

Applicants are unable to follow this logic. At any rate, at least the inventors of RIEDEL apparently did not consider a composition containing 0.2 % of mono- and di-fatty acid esters of glycerol and glycol to be substantially free of mono- and di-fatty acid esters of glycerol and glycol. After all, mono- and di-fatty acid esters of glycerol and glycol evidently are critical components of the compositions of RIEDEL (see, e.g., claim 1 of RIEDEL) and it would defy logic to interpret the teaching of RIEDEL as meaning that the compositions disclosed therein may be “substantially free” of these critical components.

In view of the above facts, Applicants refrain from addressing any of the remaining allegations which are set forth in the present Office Action, without admitting however, that any of these allegations is of any merit. Regarding CHAPLIN, the comments set forth in the response to the previous Office Action are fully incorporated herein in order to avoid repetition.

It is submitted that for at least all of the foregoing reasons, the Examiner again has failed to meet the initial burden of establishing a *prima facie* case of obviousness of the claimed subject matter. In view thereof, withdrawal of the rejection under 35 U.S.C. § 103(a) over RIEDEL in view

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of CHARLTON (and CHAPIN ?) is respectfully requested.

**CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
Silke KOHLHASE et al.

A handwritten signature in black ink, appearing to read "Neil F. Greenblum", written over a horizontal dashed line.

Neil F. Greenblum  
Reg. No. 28,394

Stephen M. Roylance  
Reg. No. 31,296

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GREENBLUM & BERNSTEIN, P.L.C.  
1950 Roland Clarke Place  
Reston, VA 20191  
(703) 716-1191